



Billing Code 3410-10

## **DEPARTMENT OF AGRICULTURE**

### **Office of the Secretary**

#### **7 CFR Part 20**

**RIN 0551-AA81**

### **Export Sales Reporting Requirements**

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would add reporting for pork (fresh, chilled, and frozen box/primal cuts) and distillers dried grain (DDG) to the Export Sales Reporting Requirements. Under this proposed rule, all exporters of U.S. pork and DDG would be required to report on a weekly basis, information on the export sales of pork and DDG to the Foreign Agricultural Service (FAS).

**DATES:** Submit comments on or before [Insert date 60 days after date of publication in the **Federal Register**].

**ADDRESSES:** Address all comments concerning this proposed rule to Peter W. Burr, Branch Chief, Export Sales Reporting Branch, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue, SW., Washington, DC 20250-1021, STOP 1021; or by email at [Pete.Burr@fas.usda.gov](mailto:Pete.Burr@fas.usda.gov); or by telephone at (202) 720-3274; or fax to (202) 720-0876.

**FOR FURTHER INFORMATION CONTACT:** Peter W. Burr, Branch Chief, Export Sales Reporting Branch, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue, SW., Washington, DC 20250-1021, STOP 1021; or by email at [Pete.Burr@fas.usda.gov](mailto:Pete.Burr@fas.usda.gov); or by telephone on (202) 720-3274; or by fax (202) 720-0876. Persons with disabilities who require an alternative means for

communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720-2600 (voice and TDD). All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

## **Background**

In 1973, Congress mandated an export sales reporting requirement to ensure that all parties involved in the production and export of U.S. grain have access to up-to-date export information. There was concern that large grain companies had an advantage because they had more information than the public on future prices and grain trade trends. Prior to the establishment of the export sales reporting requirements, it was difficult for the public to obtain information on exports until such commodities were actually shipped.

Authorized under Section 602 of the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5712), the Export Sales Reporting Requirements mandate that exporters of wheat and wheat flour, feed grains, oil seeds, cotton, pork, beef and products thereof, and other commodities that the Secretary of Agriculture (the Secretary) may designate to report each week all of their export sales, regardless of the quantity, to the Secretary. The Export Sales Reporting Requirements regulation at 7 CFR 20.2 provides that the Foreign Agricultural Service (FAS), United States Department of Agriculture (USDA) administer the requirements and delegates authority to the FAS Administrator to promulgate amendments and revisions to the regulation. There are 39 commodities that are currently covered. This proposed rule would add reporting for pork (fresh, chilled, and frozen box/primal cuts) and DDG to the Export Sales Reporting Requirements.

In recent years, USDA has received numerous requests from the U.S. pork and DDG industries to add those commodities to the Export Sales Reporting Requirements. An internal review conducted by USDA supported the claim made by these industries that the addition of

pork and DDG to the Export Sales Reporting Requirements would facilitate market transparency and enable the U.S. commodity markets and the U.S. industries to conduct more accurate and timely analysis on U.S. market conditions. More recently the Mandatory Price Reporting Act of 2010 (Pub. L. 111-239) mandates that pork be added to the Export Sales Reporting Requirements.

Reporting under the Export Sales Reporting Requirements is mandatory. All exporters of U.S. commodities are required to report all sales, regardless of the size of the sale, of wheat (by class), wheat products, barley, corn, grain sorghum, oats, rye, soybeans, soybean cake and meal, soybean oil, flaxseed, linseed oil, cotton (by type), sunflowerseed oil, cottonseed, cottonseed cake and meal, cottonseed oil, rice (by class), cattle hides and skins (cattle, calf, and kip), wet blues (grain, unsplit, and split), and beef. The reporting period is Friday through Thursday each week.

Exporters provide information on the quantity of the sale transaction, the type and class of commodity, the marketing year of shipment, the export amount, and the destination. They also report any change of previously reported information, such as cancellations and changes in destination. A weekly summary of the export sales activity is published every Thursday at 8:30 a.m. eastern time, unless a change of time is announced. The "U.S. Export Sales" report does not provide data on individual firms, only a compilation of activity by commodity. Any person (exporter) who knowingly fails to make a report could be fined up to \$25,000, imprisoned for not more than one year, or both.

Additional "daily" sales reporting is required for wheat, corn, grain sorghum, barley, oats, soybeans, soybean cake and meal, and soybean oil. Daily sales reporting is required when sales of 100,000 metric tons (20,000 metric tons for soybean oil), or more, are made by a single exporter in one calendar day to one destination. In addition, sales totaling 200,000 metric tons (40,000 metric tons for soybean oil) made during the reporting week, excluding any previously

reported daily sale, are also required to be reported under the daily sales reporting requirement. Daily sales are required to be reported to USDA by 3 p.m. eastern time no later than one day after the sale is made. Daily sales are summarized and released to the general public through a press announcement at 9:00 a.m. eastern time on the following business day and appear in the weekly report.

The “U.S. Export Sales Reports” are available electronically on the INTERNET through the FAS Home Page <http://www.fas.usda.gov/export-sales/esrd1.html>. A paper copy is also available by subscription from the National Technical Information Service at <http://www.ntis.gov/products/usda-fas.aspx>.

Under this proposed rule, all exporters of U.S. pork and DDG would be required to report weekly information with respect to the export sales of pork and DDG to the Export Sales Reporting Branch, Office of Trade Programs, FAS, USDA. Required reportable information includes the quantity, destination, and marketing year of all pork and DDG export sales, changes in sales, and shipments per parameters identified in Appendix 1. A summary of the “U.S. Export Sales Reports” is published on FAS’ Web site at <http://www.fas.usda.gov/export-sales/esrd1.html>, each Thursday at 8:30 a.m. eastern time. This change would not alter the current reporting schedule and would be undertaken using existing staff at no additional cost to the agency.

Adding pork and DDG to the Export Sales Reporting Requirements would provide an early indicator of export sales levels for these products thus improving market transparency and enabling commodity markets to better adjust to changing export activity. This proposed rule would allow for information on the total volume of sales and shipments to be available within two weeks of the export sale and shipment, rather than the nearly two-month delay experienced under the current system operated by the U.S. Bureau of the Census, which only reports actual exports.

With the pork and DDG export markets continuing to grow, the need for market transparency is becoming increasingly important. The current two-month lag in export data as available from the U.S. Bureau of the Census provides a window of opportunity for foreign buyers to buy quantities of U.S. product at prices that may be lower than if current market conditions were known. Export Sales Reporting data is released the week after the export sale takes place, thus providing a timelier indicator of current market conditions.

#### **Executive Order 12866**

The proposed rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

#### **Regulatory Flexibility Act**

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This proposed rule will not have a significant economic impact on small businesses.

#### **Executive Order 12372**

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with state and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism, by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. This rule neither provides federal financial assistance nor direct federal development; it does not provide either grants or cooperative agreements. Therefore this program is not subject to Executive Order 12372.

#### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988. The provisions of this proposed rule would not have a preemptive effect with respect to any state or local laws,

regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The proposed rule would not have a retroactive effect. Before any judicial action may be brought forward regarding this proposed rule, all administrative remedies must be exhausted.

#### **Executive Order 13132**

The policies contained in this rule would not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor would this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

#### **Executive Order 13175**

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” This Executive Order imposes requirements on the development of regulatory policies that have Tribal implications or preempt tribal laws. The policies contained in this rule do not preempt Tribal law.

#### **National Environmental Policy Act**

The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this proposed rule.

#### **Unfunded Mandates Reform Act (Pub. L. 104-4)**

Pub. L. 104-4 requires consultation with state and local officials and Indian tribal governments. This proposed rule does not impose an unfunded mandate or any other requirement on state, local, or tribal governments. Accordingly, these requirements are not subject to the provisions of the Unfunded Mandates Reform Act.

## **Executive Order 12630**

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This proposed rule would not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

## **Paperwork Reduction Act of 1995**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Secretary of Agriculture is requesting comments from all interested individuals and organizations on a proposed revision to the currently approved information collection for this program. This revision includes the proposed change in information collection activities related to the regulatory changes in this proposed rule.

**DATES:** Comments on this notice must be received by [insert date 60 days after publication in the **Federal Register**] to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Peter W. Burr, Office of Trade Programs/Import Policies and Export Reporting Division/Export Sales Reporting Branch, FAS, USDA, 1400 Independence Avenue, Stop 1025, SW., Washington, DC 20520–1025; or by email at: [esr@fas.usda.gov](mailto:esr@fas.usda.gov); or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

## **SUPPLEMENTARY INFORMATION:**

*Title:* Export Sales (Reporting Program) of U. S. Agricultural Commodities.

*OMB Number:* 0551–0007.

*Expiration Date of Approval:* January 31, 2014.

*Type of Request:* Revision of a currently approved information collection.

*Abstract:* Section 602 of the Agricultural Trade Act of 1978, as amended, (7 U.S.C.

5712) requires the reporting of information pertaining to contracts for export sale of certain specified agricultural commodities and other commodities that may be designated by the Secretary. The Secretary of Agriculture has the authority to add other commodities to this list. This proposed rule would add reporting for pork and DDG to the Export Sales Reporting Requirements. Regulations at 7 CFR part 20 implement the reporting requirements, and prescribe a system for reporting information pertaining to contracts for export sales.

USDA's Export Sales Reporting System was created after the large unexpected purchase of U.S. wheat and corn by the Soviet Union in 1972. To make sure that all parties involved in the production and export of U.S. grain have access to up-to-date export information, the U.S. Congress mandated an export sales reporting requirement in 1973. Prior to the establishment of the Export Sales Reporting System, it was difficult for the public to obtain information on export sales activity until the actual shipments had taken place.

*Estimate of Burden:* The average burden, including the time for reviewing instructions, gathering data needed, completing forms, and record keeping is estimated to be 30 minutes.

*Respondents:* All exporters of wheat and wheat flour, feed grains, oilseeds, cotton, rice, cattle hides and skins, beef, pork, and any products thereof, and other commodities that the Secretary may designate as produced in the United States.

*Estimated number of respondents:* 360.

*Estimated Number of Responses per Respondent:* 252.37.

*Estimated Total Annual Burden on Respondents:* 45,427.

*Requests for Comments:* Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency,



including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

### **E-Government Act Compliance**

FAS is committed to compliance with the E-Government Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

### **Title 7 - Agriculture**

#### **List of Subjects in 7 CFR Part 20**

Agricultural commodities, Exports, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 7 CFR Part 20 is proposed to be amended as follows:

#### **PART 20--EXPORT SALES REPORTING REQUIREMENTS**

1. The authority citation for part 20 would continue to read as follows:

**Authority:** 7 U.S.C. 5712.

2. Section 20.4 is amended by revising paragraph (c) to read as follows:

#### **§ 20.4 Definitions.**

\* \* \* \* \*

(c) *Commodity.* Wheat and wheat flour, feed grains, oilseeds, cotton, rice, cattle hides and skins, beef, pork, and any products thereof, and any other agricultural commodity the Secretary may designate. "Commodity" shall also mean a commodity having identifying characteristics as described in any announcement issued pursuant to §20.5 such as class(es)

of wheat and rice, or staple length(s) of cotton. Mixed wheat shall be considered to be the predominant wheat class of the blend. This definition excludes commodities to be used for seed which have been treated in such a manner that their use is limited to seed for planting purposes or on which a certificate has been issued by a recognized seed testing laboratory setting forth variety, germination and purity.

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3. Appendix 1 to Part 20 is revised to read as follows:

**APPENDIX 1 TO PART 20--COMMODITIES SUBJECT TO REPORTING, UNITS OF MEASURE TO BE USED IN REPORTING, AND BEGINNING AND ENDING DATES OF MARKETING YEARS**

Commodity to be Reported	Unit of Measure to be Used in Reporting	Beginning of Marketing Year	End of Marketing Year
Wheat - Hard red winter	Metric Tons	June 1	May 31
Wheat - Soft red winter	Metric Tons	June 1	May 31
Wheat - Hard red Spring	Metric Tons	June 1	May 31
Wheat - White (incl. Hard and soft white)	Metric Tons	June 1	May 31
Wheat - Durum	Metric Tons	June 1	May 31
Wheat - Products - All wheat flours (including clears) bulgur, semolina, farina, and rolled, cracked and crushed wheat	Metric Tons	June 1	May 31
Barley - Unmilled (including feed and hull-less waxy barley)	Metric Tons	June 1	May 31
Corn - Unmilled (including waxy, cracked - if 50% whole kernels)	Metric Tons	Sept. 1	Aug. 31
Distillers Dried Grain	Metric Tons	Sept. 1	Aug. 31
Rye - Unmilled	Metric Tons	June 1	May 31
Oats - Unmilled	Metric Tons	June 1	May 31
Grain Sorghum - Unmilled	Metric Tons	Sept. 1	Aug. 31
Soybeans	Metric Tons	Sept. 1	Aug. 31

Commodity to be Reported	Unit of Measure to be Used in Reporting	Beginning of Marketing Year	End of Marketing Year
Soybean Cake and Meal	Metric Tons	Oct. 1	Sept. 30
Soybean Oil - including: crude (including degummed), once refined, soybean salad oil (including refined and further processed by bleaching, deodorizing or winterizing), hydro- genated, packaged oil	Metric Tons	Oct. 1	Sept. 30
Flaxseed	Metric Tons	June 1	May 31
Linseed Oil - including raw, boiled	Metric Tons	June 1	May 31
Cottonseed	Metric Tons	Aug. 1	July 31
Cottonseed Cake and Meal	Metric Tons	Oct. 1	Sept. 30
Cottonseed Oil - including crude, once refined, cottonseed salad oil (refined and further processed by bleaching, deodorizing or winterizing), hydrogenated	Metric Tons	Oct. 1	Sept. 30
Sunflowerseed Oil crude, once refined, sunflowerseed salad oil (refined and further processed by bleaching, deodorizing or winterizing), hydrogenated	Metric Tons	Oct. 1	Sept. 30
Cotton - American Pima - Raw, extra long staple	Running Bales	Aug. 1	July 31
Cotton - Upland - Raw, staple length 1 1/16 inches and over	Running Bales	Aug. 1	July 31
Cotton - Upland - Raw, staple length 1 inch up to 1 1/16 inches	Running Bales	Aug. 1	July 31
Cotton - Upland - Raw, staple length under 1 inch	Running Bales	Aug. 1	July 31
Rice - Long grain, rough	Metric Tons	Aug. 1	July 31

(including parboiled)			
Commodity to be Reported	Unit of Measure to be Used in Reporting	Beginning of Marketing Year	End of Marketing Year
Rice - Medium, short and other classes, rough (including parboiled)	Metric Tons	Aug. 1	July 31
Rice - Long grain, brown (including parboiled)	Metric Tons	Aug. 1	July 31
Rice - Medium, short and other classes, brown (including parboiled)	Metric Tons	Aug. 1	July 31
Rice - Long grain, milled (including parboiled)	Metric Tons	Aug. 1	July 31
Rice - Medium, short and other classes, milled (including parboiled, brewer's rice)	Metric Tons	Aug. 1	July 31
Cattle Hides and Skins - Whole cattle hides, (excluding wet blues)	Pieces	Jan. 1	Dec. 31
Cattle Hides and Skins - Whole calf skins (excluding wet blues)	Pieces	Jan. 1	Dec. 31
Cattle Hides and Skins - Whole kip skins, (excluding wet blues)	Pieces	Jan. 1	Dec. 31
Cattle Hides and Skins - Cattle, calf, and kip cut into croupons, crops, dossets, sides, butts and butt bend (hide equivalent) (excluding wet blues)	Number	Jan. 1	Dec. 31
Cattle Hides and Skins - Cattle, calf and kip, in cuts not otherwise specified; pickled/limed (excluding wet blues)	Pounds	Jan. 1	Dec. 31
Cattle, calf and kip, Wet blues - unsplit (whole or sided) hide equivalent	Number	Jan. 1	Dec. 31

Commodity to be Reported	Unit of Measure to be Used in Reporting	Beginning of Marketing Year	End of Marketing Year
Cattle, calf and kip, Wet blues - grain splits (whole or sided) hide equivalent	Number	Jan. 1	Dec. 31
Cattle, calf and kip, Wet blues - splits, (excluding grain splits)	Pounds	Jan. 1	Dec. 31
Beef - fresh, chilled or frozen muscle cuts/whether or not boxed	Metric tons	Jan. 1	Dec. 31
Pork- fresh, chilled or frozen muscle cuts/whether or not boxed	Metric tons	Jan. 1	Dec. 31

June 14, 2012  
Date

Suzanne Heinen  
Administrator,  
Foreign Agricultural Service.